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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,716	12/31/2003	Daniel P. Otto	921095-95214	9218

7590 05/27/2005

BARNES & THORNBURG
P.O. Box 2786
Chicago, IL 60690-2786

EXAMINER

NOORI, MAX H

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,716

Applicant(s)

OTTO ET AL.

Examiner

Max Noori

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
5) ☒ Claim(s) 10-15 is/are allowed.
6) ☒ Claim(s) 1-5 and 8 is/are rejected.
7) ☒ Claim(s) 6, 7 and 9 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/14/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election Acknowledgment

1. Acknowledgment is made of the election of group I claims 1-15, with traverse, the non-elected claims, i.e., claims 16-19 are withdrawn from the consideration. The non-elected claims should be canceled by the Application during the prosecution of this application.
2. Figures 1-10, or any other figure in that matter, should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2855

4. Claims 1-5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norby et al. (5,756,903)

Regarding claims 1, 4, Norby et al., discloses a track strength testing vehicle with features of the claimed invention including an axle assembly (element 30) having a first wheel and a second wheel (see, for example, figure 6), the wheels positioned to ride on railway track a first and a second axle halves each connected to a wheel. The axle halves being interconnected by a device adapted to increase and decrease the distance between them each axle half. Norby et al., only shows one force detecting means (element 68) and does not show two separate load sensing device for each axle. It would have been obvious, however, for a skilled artisan at the time of the invention to modify Norby et al., to provide for two load sensing means, one for each. Because increasing the number of the sensors and specifically allocating a sensor to each axle obviously aids to increase the accuracy and reliability of the measurement.

Regarding claims 2, and 8, Norby et al., teaches the use of hydraulic ram (see claim 1).

Regarding claim 3, the axles do not rotate.

Regarding claim 5, Norby et al., shows vertical recesses (see for example figure 8).

5. Claims 6, 7 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 10-15 are allowed over the prior art of the record.

Art Unit: 2855

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

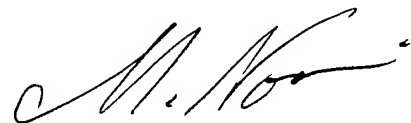
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Max H. Noori whose telephone number is (571) 272-2185. The examiner can normally be reached on Tuesday-Friday from 8:00 AM to 6:00 PM.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. The central fax number is (703) 827-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MHN

Tuesday, May 24, 2005



MAX NOORI
PRIMARY EXAMINER